



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



[REDACTED]
PAULINE COSPER v. MARCO & FLOR MORA
CV-11-0083-PR

PARTIES:

Petitioners: Marco and Flor Mora.

Respondent: Pauline Cosper.

FACTS:

A vehicle driven by Pauline Cosper collided with Marco and Flor Mora's vehicle, allegedly resulting in soft-tissue injuries to the Moras. The Moras filed a lawsuit against Cosper, which was referred to compulsory arbitration. The arbitrator awarded \$13,460.24 to the Moras, and Cosper appealed.

Pursuant to Rule 77(g), Arizona Rules of Civil Procedure, Cosper filed her list of witnesses and exhibits with her appeal, reserving "the right to supplement consistent with this Court's scheduling orders as discovery continues." Rule 77(g) provides:

(g) Discovery and Listing of Witnesses and Exhibits. In all cases in which an appeal is taken from the arbitration award, the parties shall proceed as follows:

(1) The appellant shall simultaneously with the filing of the Appeal from Arbitration and Motion to Set for Trial referenced above also file a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these rules. If the appellant fails or elects not to file such a list of witnesses and exhibits together with the Appeal from Arbitration and Motion to Set for Trial, then the witnesses and exhibits intended to be used at trial by appellant shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule 75(c) of these rules.

(2) [Provisions regarding appellee's list of witnesses and exhibits, paralleling subparagraph (1), above.]

(3) The parties shall have 80 days from the filing of the Appeal from Arbitration and Motion to Set for Trial to complete discovery, pursuant to Rules 26 through 37 of these rules.

(4) *For good cause shown the court may extend the time for discovery set forth in subsection (3) above and/or allow a supplemental list of witnesses and exhibits to be filed.*

(Emphasis supplied.)

On September 10, 2010, Judge John Rea set trial for December 20, 2010, and ordered the parties to submit a final witness list by November 16, 2010. On October 7, 2010, in a Fifth Supplemental Disclosure, Cosper first disclosed a new expert witness.

The Moras moved to strike Cosper's Supplemental Disclosure, arguing that, absent a showing of good cause, Rule 77(g)(1) required all witnesses and exhibits to be disclosed with the Notice of Appeal. Judge Rea granted the motion to preclude Cosper's expert, concluding that the specific provision of Rule 77(g)(4) prevailed over the general provision of 77(g)(3):

The Court reads Rule 77(g)(4) to require some showing of good cause to supplement the lists of witnesses and exhibits required by Rule 77(g)(1) and (2). Defendant, arguing that "good cause" is irrelevant, contends that she has an absolute right to supplement her list of witnesses and exhibits anytime within the 80 days provided for discovery by Rule 77(g)(3) and has *made no attempt to show any good cause* for the delayed addition of Mr. Anderson as a witness and his photographs as exhibits.

(Emphasis in original.)

Cosper filed a special action petition in the Court of Appeals, which granted relief. It acknowledged the argument that the specific provision of Rule 77(g)(4) prevails over the general provision of 77(g)(3) and also acknowledged "some tension between the right to discovery and disclosure contained in Rule 77(g)(3) and the discretion allowed by Rule 77(g)(4)." It concluded, however, that Rule 77(g) should be interpreted as allowing the parties their full discovery rights (albeit for only 80 days) while preserving for the court the discretion to allow *additional* discovery – not as creating a judicial impediment to the use of timely-disclosed evidence.

The appeals court concluded that Rule 77(g) permitted "supplemental disclosure pursuant to Rules 26 through 37 within 80 days after the filing of an appeal from compulsory arbitration, without requiring that parties show good cause or obtain the permission of the court."

The Arizona Supreme Court granted the Moras' Petition for Review.

ISSUE:

Harmonizing Rule 77(g)(1) with Rule 77(g)(3). Courts must construe a civil procedure rule in harmony with other civil procedure rules. Rule 77(g)(1) sets a deadline for filing a list of trial witnesses and exhibits when appealing an award from a mandatory arbitration; Rule 77(g)(3) provides for a period of post-appeal, pre-trial discovery. The Court of Appeals held that Rule 77(g)(3) supersedes Rule 77(g)(1) – and nullifies its disclosure deadline. But cannot the rules be harmonized?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.